



Office of the Attorney General
State of Texas

September 23, 1992

DAN MORALES
ATTORNEY GENERAL

Mr. Terrence S. Welch
Vial, Hamilton, Koch & Knox
1717 Main Street, Suite 4400
Dallas, Texas 75201

OR92-548

Dear Mr. Welch:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 16768.

The Town of Flower Mound (the "town"), which you represent, has received a request for information relating to its mayor, Gary Acker. Specifically, at issue here is material "produced or in possession of the Town of Flower Mound through its City Secretary's office, the Police Department, employees, consultants, and elected officials past and present, that relate in any way to Gary L. Acker . . . [excluding] all routinely supplied Councilmember and Mayoral information that, in your opinion, has previously been disseminated to" the requestor.

You have submitted to us for review three exhibits. Exhibit 2 contains pleadings and a letter to the police chief from his attorney. You advise us that the pleadings in Exhibit 2 have been made available to the requestor. Accordingly, we need not address their availability here. Exhibit 3 contains a letter regarding a suit styled *Hazelwood v. Acker* from the attorney for Mr. Acker to the police chief's attorney. Exhibit 4 contains correspondence, handwritten notes, and a copy of a check. There is no indication that the records in Exhibit 4 relate to Mr. Acker, nor have you demonstrated any such relation. Because the records in Exhibit 4 are clearly not responsive to the request, we need not address their availability under the Open Records Act. Accordingly, we only address the letter in Exhibit 2 and Exhibit 3 at this time. You claim that this information is excepted from required public disclosure by sections 3(a)(1) and 3(a)(7) of the Open Records Act. You also assert that this information constitutes "personal notes" and is thus not "information

collected, assembled, or maintained by or for governmental bodies" and is not subject to the Open Records Act.

As a threshold issue, we must consider whether the information at issue here is subject to the Open Records Act. Section 3(a) of the Open Records Act provides, in pertinent part:

[a]ll information collected, assembled, or maintained by or for governmental bodies, except in those situations where the governmental body does not have either a right of access to or ownership of the information, pursuant to law or ordinance or in connection with the transaction of official business is public information and available to the public

In *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), the Texas Supreme Court addressed the concern that a broad reading of the definition of "public information" would result in the disclosure of information concerning the affairs of private citizens. In addressing this concern, the court said:

The public's right to be informed about the affairs of government may thus conflict with the right of the individual to control access to information concerning his own affairs. The balance between these two competing interests has not yet been struck with clarity, and the nature and extent of each interest is yet to be satisfactorily determined. We believe, however, that, except in unusual circumstances, the task of balancing these interests must be left to the Legislature.

Industrial Found., 540 S.W.2d 668 at 676 (footnote omitted). Thus virtually all information, even "personal notes" in the physical possession of a governmental body is "public information" subject to the Open Records Act. Open Records Decision No. 549 (1990) at 4. Only if the "public information" comes within one of the exceptions provided by the legislature may it be withheld from required public disclosure. *Id.*

Additionally, the letters in Exhibit 2 and Exhibit 3 relate to a dispute between the mayor and police chief and involve issues concerning the town budget and allocations for the police department. Although the dispute appears from the

face of the documents to be only between the mayor and police chief in their capacities as private citizens, we conclude nonetheless that the letters in Exhibit 2 and Exhibit 3 relate to the transaction of official town business and are thus "governmental records" subject to the Open Records Act.

We next address your claim that the letters in Exhibit 2 and Exhibit 3 fall within an exception to disclosure under section 3(a) of the Open Records Act. You claim that the information is excepted from required public disclosure by the attorney-client privilege under sections 3(a)(1) and 3(a)(7). Although this office has frequently cited section 3(a)(1) to except from required public disclosure information within the attorney-client privilege, the privilege is more specifically covered under section 3(a)(7). Open Records Decision No. 574 (1990). Section 3(a)(7) protects

matters in which the duty of the Attorney General of Texas or an attorney of a political subdivision, to his client, pursuant to the Rules and Canons of Ethics of the State Bar of Texas are prohibited from disclosure, or which by order of a court are prohibited from disclosure. [Footnote omitted.]

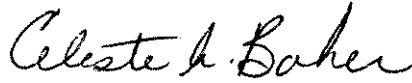
Attorney-client communications, however, may be withheld only to the extent that such communications document client confidences or reveal the attorney's legal opinion and advice. Open Records Decision No. 574 at 3. Records of calls made, meetings attended, or memos sent, so long as no legal advice or client confidences are revealed, may not be excepted under section 3(a)(7). *Id.*

We have examined the documents submitted to us for review. We agree that the letter in Exhibit 2 contains information which constitutes client confidences. For your convenience, we have marked the portions of the letter which may be withheld from required public disclosure under section 3(a)(7) of the Open Records Act. The letter in exhibit 3, however, does not fall within the section 3(a)(7) exception and must be released in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with

a published open records decision. If you have questions about this ruling, please refer to OR92-548.

Yours very truly,

A handwritten signature in cursive script that reads "Celeste A. Baker".

Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/GCK/lmm

Ref.: ID# 16768
ID# 17152
ID# 17151

cc: Mr. Gary L. Acker
2701 High Road
Flower Mound, Texas 75028